



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Aligned Energy Data Centers (Ashburn), LLC
FOR
Aligned Energy Data Centers Ashburn
Air Registration No. 74169**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Aligned Energy Data Centers (Ashburn), LLC, regarding Aligned Energy Data Centers Ashburn, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aligned Energy" means Aligned Energy Data Centers (Ashburn), LLC, a limited liability corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Aligned Energy is a "person" within the meaning of Va. Code § 10.1-1300.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" means the Aligned Energy Data Centers Ashburn facility, located at 21890 Uunet Drive, in Loudoun County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "Permit" means the Minor New Source Review Permit to construct and operate emergency diesel engine generator sets at the Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to Aligned Energy on May 17, 2019.
10. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
14. "VEE" means Visual Emissions Evaluations.

SECTION C: Findings of Fact and Conclusions of Law

1. Aligned Energy owns and operates the Facility in Loudoun County, Virginia. The Facility is subject to the Permit to construct and operate emergency diesel engine generator sets at the Facility. The Permit authorizes Aligned Energy to construct and operate 108 generator sets, each unit with a standby rated capacity of 2250kW, and two generator sets that each have a standby rated capacity of 1000kW. Aligned Energy is an 80% synthetic minor (SM-80) source of emissions.
2. Aligned Energy performed stack testing of two generator sets and VEE on April 27-28, 2021, in attempt to comply with the conditions of the Permit.

3. On July 1, 2021, DEQ reviewed the report for the testing event and on July 14, 2021, DEQ completed a full compliance evaluation at the Facility. DEQ observed that 48 generator sets had been installed by Aligned Energy and 28 generator sets had been constructed and operated with a standby rated capacity of 2500kW.
4. The Permit does not authorize the construction and operation of emergency diesel engine generator sets with a standby rated capacity of 2500kW at the Facility.
5. 9 VAC 5-80-1120 states that no owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of the permit.
6. The two generator sets stack tested by Aligned Energy on April 27-28, 2021, had a standby rated capacity of 2500kW. DEQ did not accept the stack testing results submitted by Aligned Energy to be valid. The testing event did not meet the load criteria specified in Permit Condition 17 because the tested generators sets did not have a 2250kW standby rated capacity as allowed by the Permit.
7. Condition 17 of the Permit requires Aligned Energy to conduct initial performance stack tests on four Caterpillar Model 3516C generator sets as specified in the Permit to determine compliance with the emissions limits contained in Conditions 13 and 14 of the Permit. Part a of Permit Condition 17 states that "Testing shall be performed on the exhaust stack of the emergency engine-generator sets to demonstrate compliance with the NO_x and CO emission limits specified in Condition 13 and 14. Performance testing on four Caterpillar model 3516C emergency engine gen-sets shall consist of three test runs for the following separate scenarios: i. Generator electrical power output \geq 90% of rated capacity; and ii. Generator electrical power output $>$ 65% and \leq 75% of rated capacity."
8. Condition 19 of the Permit requires Aligned Energy to conduct VEE concurrent with the initial compliance determination required in Permit Condition 17.
9. Operational data and documentation was not made available to DEQ during or immediately following the compliance inspection to demonstrate compliance with Condition 21 of the Permit.
10. Condition 21 of the Permit requires Aligned Energy to maintain records of emission data and operating parameters as necessary to demonstrate compliance with the Permit, and that the content and format of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO. The records shall be available for inspection by the DEQ and shall be current for the most recent five years, unless otherwise noted. (9VAC5-80-1180 and 9VAC5-50-50).

11. 9 VAC 5-170-160(A) provides that the Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law.
12. Va. Code § 10.1-1322(A) states that pursuant to the regulations adopted by the Board, permits may be enforced under the provisions of this chapter and failure to comply with any condition of a permit shall be considered a violation of this chapter.
13. On September 29, 2021, based on DEQ's evaluation of submitted information, DEQ-NRO issued a Notice of Violation (NOV No. ANRO001958) to Aligned Energy for the violations at Facility described above in paragraphs C(1) through C(10).
14. On October 26, 2021, Aligned Energy submitted a written response to the NOV, and on October 27, 2021, DEQ staff and representatives of Aligned Energy had a conference call to discuss the NOV, Aligned Energy's response, and enforcement proceedings. On November 5, 2021, Aligned Energy submitted information to responds to questions asked by DEQ during the conference call on October 27, 2021.
15. Based on the stack testing report reviewed by DEQ on July 1, 2021, full compliance evaluation performed by DEQ on July 14, 2021, the NOV issued to Aligned Energy on September 29, 2021, the NOV reply submitted by Aligned Energy on October 26, 2021, the conference call held on October 27, 2021, and related correspondence between DEQ and representatives of Aligned Energy, the Board concludes that Aligned Energy has violated 9 VAC 5-80-1120, and Conditions 17, 19, and 21 of the Permit as described above.
16. The October 26, 2021, NOV reply from Aligned Energy included documentation to adequately address the record keeping noncompliance of Condition 21 of the Permit including the submission of missing records previously requested by DEQ.
17. On November 5, 2021, Aligned Energy submitted information to respond to questions asked by DEQ during the conference call on October 27, 2021, and indicated to DEQ that modification of the gen sets to match the permitted standby rating capacity of 2250kW was planned for completion in December 2021.
18. On December 17, 2021, Aligned Energy submitted a Form 7 Application requesting revisions to the current Permit or a new permit. The requested permitting changes included changing 40 of the permitted units from 2250kW to 3000kW, changing 4 of the permitted units from 2250kW to 2500kW, reducing the number of permitted 2250kW emergency generators from 108 to 64, and changing the throughput for all generators to gallons of fuel used rather than operating hours.
19. On February 29, 2022, Aligned Energy submitted an email update per DEQ's request. The update stated that the generator work was completed in December 2021 for the subject generator sets such that standby capacity is limited to the Permit limit of 2250kW and the generator nameplates match that value. The update also stated that no

modification work was completed to change the standby capacity and nameplate for four installed generator sets, because as per the December 16, 2021, Form 7 submission, Aligned Energy intends to keep, and permit, those four units at a standby rated capacity of 2500kW.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Aligned Energy, and Aligned Energy agrees to pay a civil charge of **\$35,695.92** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Aligned Energy shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Aligned Energy shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Aligned Energy for good cause shown by Aligned Energy, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. ANRO001958 dated September 29, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Aligned Energy admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Aligned Energy consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Aligned Energy declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Aligned Energy to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Aligned Energy shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Aligned Energy shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Aligned Energy shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Aligned Energy. Nevertheless, Aligned Energy agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Aligned Energy has completed all of the requirements of the Order;
 - b. Aligned Energy petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Aligned Energy.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Aligned Energy from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

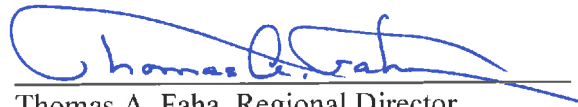
12. Any plans, reports, schedules or specifications attached hereto or submitted by Aligned Energy and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Aligned Energy certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Aligned Energy to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Aligned Energy.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Aligned Energy voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of June, 2022.

Consent Order

Aligned Energy Data Centers (Ashburn), LLC; Air Registration No. 74169

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Thomas A. Faha, Regional Director
Department of Environmental Quality

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Aligned Energy Data Centers (Ashburn), LLC voluntarily agrees to the issuance of this Order.

Date: 06.17.22 By: [Signature], CEO
(Person) (Title)
Aligned Energy Data Centers (Ashburn), LLC

State of Texas
~~Commonwealth of Virginia~~
City/County of Plano/Collin

The foregoing document was signed and acknowledged before me this 17th day of June, 2022, by Andrew Schaap who is CEO of Aligned Energy Data Center Centers (Ashburn), LLC, on behalf of the corporation.

Elizabeth J. Heilman
Notary Public

130077557

Registration No.

My commission expires: 01.15.23

Notary seal:

